

CITY OF EAST PROVIDENCE

PLANNING BOARD

MINUTES OF NOVEMBER 3, 2005
Public Hearing on Walgreens LDP

Present: Mr. Almeida, Mr. Cunha, Mr. Robinson, Mr. Batty, Mr. O'Brien, Mr. Gerstein, William Conley, City Solicitor, Jeanne Boyle, and Diane Feather (staff).

1. SEATING OF ALTERNATE MEMBER

Chairman Robinson asks Mr. Conley if it is appropriate to retain the same members at this meeting that took part in the last meeting? Mr. Conley responded that even though the October minutes have not been formally approved by the Board in preparation for the meeting, he did review the last set of minutes, but noted that it appears from the record that if in fact those minutes are approved by the Board that it becomes a record for the Board. It appears from the record that there were five members who were present and participated in the hearing. Those five members would be eligible to vote. Those members which were not present and did not participate would not be eligible to vote. Any other business other than Walgreens that the Board has to discuss, the other members may participate.

Mr. Conley said that since the Board at this time has not approved any formal record for the review, the members who were not present at the last meeting may not participate.

Mr. Robinson asks Mr. Conley if it would be appropriate to have Mr. Almeida, for example, participate in the approval or disapproval of the minutes? Mr. Conley said Mr. Almeida cannot participate because he was not there.

It was noted that Mr. Batty, Mr. Gerstein, Mr. O'Brien, and Mr. Robinson would be the voting members tonight.

2. APPROVAL OF PLANNING BOARD MINUTES

- A. Minutes of October 5, 2005 (*enclosed*)
- B. Minutes of August 22, 2005 (to be submitted)
- C. Minutes of September 12, 2005 (to be submitted)

On a motion by Mr. Batty, seconded by Mr. O'Brien, the Board unanimously voted to approve the minutes of October 5, 2005.

It was noted the minutes of August 22, 2005 and September 12, 2005 would be forthcoming.

3. APPROVAL OF PLANNING BOARD CORRESPONDENCE

There was none.

4. NEW BUSINESS

A. 1. Public Informational Meeting – Walgreens Master Plan LDP, Warren Avenue at South Blossom Street Map 404, Block 1, Parcels 1,2,3,4 and 5, and Map 407, Block 2, Parcels 1 and 2

a. Memorandum dated Sept. 29, 2005 from the Planning Dept. to the Planning Board; and

b. Memorandum dated October 27, 2005 from the Planning Dept. to the Planning Board

Chairman Robinson noted that at the last meeting, Attorney Slepakow thought he should step down on this matter and recuse himself. Mr. Robinson asks Mr. Conley if he has had the opportunity to develop an opinion on that issue? Mr. Conley states that in preparation for the meeting he read the minutes and comments that the Chair had that brought that issue into question. As I understand Mr. Slepakow's suggestion that the Chair recuse from participation based on the statements that he made. The jurisdiction over the issue of whether or not a public official has a conflict of interest in participating in voting on a matter before the Board or Commission under the RI Code of Ethics belongs to the RI Ethics Commission. This Planning Board has no ability force some of its own members to recuse under the RI Code of Ethics because it is well beyond their jurisdiction. There are two ways that that issue can be resolved either by way of request for an advisory opinion from the public official who is acting to determine whether or not they can act in accordance with the RI Code of Ethics in the matter before them or it can also be brought before the RI Ethics Commission by way of a complaint from a party who believes that the action by the public official is in violation of the code. Those are the only two methods bringing that question before the Board and that board is the only board that has jurisdiction to make that determination.

Attorney Slepakow states that he is the attorney for Mark Investments, the applicant. Also joining me tonight as the attorney for Mark Investment is Robert Flanders who is going to address that question. Mr. Slepakow states that they have a couple of issues procedurally and he outlined them below.

1. We feel that the Chairman should recuse himself and we do not 100 percent agree that the only choice of the Ethics Commission, the East Providence City Ordinances provide that the City Council has the right to act in a situation of this type.

2. We are concerned that although an exceptionally good job was done with the October minutes that potentially we should have had a court reporter and stenographer.
3. At this point, according to the ruling on continued cases, you are correct, we are down to a Board of four. This is more of a fairness argument. The Chairman has already indicated strong opposition to it and it puts us in a very difficult position.

Mr. Slepko states that after Mr. Flanders speaks, we would like to withdraw, without prejudice to permit re-filing for a new hearing of the Board where we will introduce all of our testimony over again, we will have a complete court record of it, and we assume it will not be based on a four person Board. Even if a member could not be there, there would be two alternates. Both on the issue of the record, some fundamental fairness, and the issue of the opportunity assuming the Chairman will not recuse himself, the issue of whether or not we would want to take this to the City Council. It has always been my understanding with Planning that there is no 18 month rule. We understand we would have to file again and go through the process of advertising etc. It appears to us that we are embarking on a situation that in the long run, without the court record, and without the opportunity to go to the City Council, would be putting ourselves in jeopardy.

At this time, Attorney Robert Flanders thanked Chairman Robinson for his candor about his personal interest in this application for Walgreens and thanked him for the opportunity to address that question at this meeting. He noted that Chairman Robinson does live on South Blossom Street which is directly opposite the proposed development and noted the traffic situation that Mr. Robinson faces daily in getting out of South Blossom Street. He is concerned that his personal interest could create a conflict of interest that ought to in fairness and under law require the Chairman to step aside. Mr. Flanders states that It is our suggestion that it does because the conflict of interest laws that apply here states (he reads from the Code of Ethics): "***that no person subject to this Code of Ethics shall have any interest, financial or otherwise, direct or indirect which is in substantial conflict with the proper discharge of his duties or employment in the public interest***". It is our belief that in this situation the Chairman does have a personal interest in this since he states that this would adversely affect him. We believe this is in conflict with his duties of the Planning Board.

Mr. Flanders states that he believes that Chairman Robinson should file a statement of a conflict of interest under Sec. 36-14-6 which indicates the interest that he has. He states he will leave the form that asks Mr. Robinson to disclose the personal interest that he has in this development because the interest that he has could affect the validity of any ruling that this Board issues. He asks Mr. Robinson to reconsider and consider filing a Conflict of Interest statement so that he is not inadvertently put in a position where just

by merely failing to file you are violating the law. Even if we withdraw this petition and start fresh, that in the interim you give serious consideration to stepping aside and avoid us having to go to the City Council and Ethics Commission over this issue.

Mr. Robinson responds that I do not have any interest in prejudicing the applicant or in giving the appearance of impropriety in any way. Mr. Robinson asks Mr. Conley if they should get an advisory opinion by the Ethics Commission on this issue? Mr. Conley answers yes. Mr. Robinson asks Mr. Conley if he has an opinion with respect to completing the conflict of interest form? Mr. Conley states yes, if you want to participate I think the prudent course would be to seek an advisory opinion for the Ethics Commission. I also agree that if you decide to participate and make the decision not to proceed, that you need to fill out the Conflict of Interest statement. The Board would then file that with the Ethics Commission. Mr. Conley states that the third alternative is to defer the application at this time and seek an advisory opinion.

Mr. Robinson said that if the applicant is inclined to withdraw their petition, and start fresh then it might seem prudent to me to submit a request for an advisory opinion from the Ethics Commission.

Mr. Conley states that if we simply defer this evening and continue that would give the Chair an opportunity to file.

Attorney Slepko states they will withdraw without prejudice at this time and resubmit a new application and address the issues . Mr. Robinson states he will seek an advisory opinion from the Ethics Commission during that period of time. Mr. Slepko also stated he wishes to have the opportunity of five voting members at the next hearing. It was also noted that the applicant agreed to pay for the public hearing advertisement and court reporting services for this meeting.

Motion

On a motion by Mr. Batty, seconded by Mr. O'Brien, the Board unanimously voted to allow Walgreens and their application to be withdrawn without prejudice and to resubmit and file at another time.

Roll Call Vote

Mr. Batty	Aye
Mr. O'Brien	Aye
Mr. Gerstein	Aye
Chair Robinson	Aye

A. 2. Street Abandonment – South Blossom Street

Mr. Robinson noted that this will also apply to the street abandonment portion above.

5. CONTINUED BUSINESS

No continued business

6. COMMUNICATIONS

No communications

7. ANNOUNCEMENT

- A. Next Regular Meeting – Monday, November 14, 2005, 7:30 p.m., Room 306

8. ADJOURNMENT

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Jeanne M. Boyle
Director

JMB/sac